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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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07/945,465 09/16/92 SEGATTA

D3M1/0426

GOODYEAR TIRE & RUBBER COMPANY
PATENT & TRADEMARK DEPT.
DEPT. 823
AKRON, OHIO 44316

T 91221A

EXAMINER

JOHNSTONE, A

ART UNIT

PAPER NUMBER

1301

DATE MAILED:

04/26/94

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 2/2/94 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), x days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-8 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1-8 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with Informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

Art Unit 1301

1. The declaration under 37 C.F.R. § 1.132 filed February 2, 1994 is insufficient to overcome the rejection of claims 1-8 based upon Sandstrom et al. in view of either European patent application 410,311, European patent application 461,329, or Japanese patent application 1-135847 or based upon Yasuda in view of Sandstrom et al. or based upon Japanese patent application 57-212239 in view of Sandstrom et al. as set forth in the last Office action because the only facts alleged in the declaration are not pertinent to the rejection (see MPEP 716).
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-8 are rejected under 35 U.S.C. § 103 as being unpatentable over Sandstrom et al. in view of either European patent application 410,311, European patent application 461,329, or Japanese patent application 1-135847.

These references are combined for the same reasons as set forth in Paper No. 9, para. 17. Applicants argue that there is no certainty the Sandstrom et al. tread base rubber composition would work effectively in the bead apex of a conventional steel cord carcass radial tire as proposed by the examiner, however the art clearly shows that one of ordinary skill in the art would have a reasonable expectation of success contrary to applicants'

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arguments. Applicants' other arguments are directed to the individual references rather than the combination proposed by the examiner.

4. Claims 1-8 are rejected under 35 U.S.C. § 103 as being unpatentable over Yasuda in view of Sandstrom et al.

These references are combined for the same reasons as set forth in Paper No. 9, para. 18. Applicants argue that the melting point limitations are not disclosed in the references, however the correspondence in composition between the resulting apex rubber composition in a conventional steel cord carcass radial tire and applicants' apex rubber composition gives the examiner reasonable basis to infer that the melting point limitations are also met in the combination proposed by the examiner. In such a case the burden shifts to applicants to show that the resulting composition would not necessarily possess the claimed melting point properties (see *In re Fitzgerald et al.*, 205 USPQ 594-598 for example). Applicants' other arguments are not directed to the combination proposed by the examiner.

5. Claims 1-8 are rejected under 35 U.S.C. § 103 as being unpatentable over Japanese patent application 57-212239 in view of Sandstrom et al.

These references are combined for the same reasons as set

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forth in Paper No. 9, para. 19. Applicants argue that the liquid diene rubber in JP '239 excludes trans 1, 4-polybutadiene, but no facts have been presented to support this assertion. Applicants also argue that there is no motivation to make the proposed combination, however the motivation to provide the conventional steel cord carcass radial tire having the JP '239 bead filler composition with trans 1, 4-polybutadiene as the liquid diene rubber is clearly to improve green strength (Sandstrom et al. col. 2 lines 19-24 for example) as set forth in the previous Office action. The remainder of applicants' arguments are not directed to the combination proposed by the examiner.

6. Applicant's arguments filed February 2, 1994 have been fully considered but they are not deemed to be persuasive.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

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8. Any inquiry concerning this communication should be directed to Adrienne Johnstone at telephone number (703) 308-2059.

AS Adrienne Johnstone;nrd
April 21, 1994
April 22, 1994

Ball
MICHAEL W. BALL
SUPERVISORY PATENT EXAMINER
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